



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 25, 2003

Mr. Ken Stewart
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2003-4364

Dear Mr. Stewart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183281.

The Texas Department of Transportation (the "department") received a written request for certain information pertaining to a portion of State Highway 288. Specifically, the request reads in part as follows:

I am requesting copies of the 85%tile speed studies done on State Highway 288 nearest the Hwy 35 intersection in Angleton, TX. I also request strip map and crash data for this highway zone. I am looking for data obtained in 2001 or before (while posted speeds were 70 mph), and separately, data for 2002 (after speed limit changes to 55 mph).

If trial runs were used instead, then please send a copy of Summary of Trial Run for Speed Zones (TxDOT Form 1929) instead of the strip maps.

In short, what I am looking for are engineering and traffic safety studies that were conducted in support of speed limits on Hwy 288 before the environmental speed limits were implemented in early 2002, and then speed checks measured after the speed limit change (e.g., what was the 85%tile speed while speed limits were 55 mph).

You have submitted to this office as responsive to the request three pages of documents pertaining to the placement of speed limit postings along a portion of State Highway 288. You contend that these documents are a "representative sample" of the requested information

and are excepted from required public disclosure pursuant to section 552.103 of the Government Code. However, you have not explained, nor is it apparent to this office, how the three submitted documents in fact are responsive to the records request, which seeks “85%tile speed studies,” “strip map and crash data,” a “Summary of Trial Run for Speed Zones,” and “engineering and traffic safety studies.” We therefore do not address the extent to which the submitted documents are subject to required public disclosure at this time.

We therefore conclude that you have not submitted to this office any information that is responsive to the request. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Under section 552.301(e)(1)(D), “[a] governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information] . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]” Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

Because you have not submitted to this office any information held by the department that is responsive to the request, we conclude that you have failed to comply with section 552.301 with respect to the requested information. Therefore, this information is presumed to be public and must be released, to the extent it exists, unless there is a compelling reason to withhold the information from the public. Gov’t Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although you contend that the requested information is excepted from required public disclosure pursuant to section 552.103, you have not demonstrated a compelling reason to withhold the information under that exception. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.); Open Records Decision No. 542 at 4 (1990) (governmental body may waive section 552.103). Consequently, we have no choice but to order the requested information released pursuant to section 552.302, to the extent that the information was held by the department at the time the department received the records request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/RWP/sdk

Ref: ID# 183281

Enc: Submitted documents

c: Mr. Robert Johnston
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Lake Jackson, Texas 77566
(w/o enclosures)